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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2006-000113 12/08/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

CITY OF PEORIA

CYNTHIA ODOM

v.

BRINKS HOME SECURITY INC

BARBARA J DAWSON

JAMES H HAYS

UNDER ADVISMENT RULING

(Plaintiff City Of Peoria's Motion For Summary Judgment, Plaintiff City Of Phoenix's Cross-Motion For Summary Judgment and Defendant Brink's Home Security, Inc.'s Motion For Summary Judgment)

Brink's sells property monitoring services in the cities of Peoria and Phoenix. The human component of the monitoring is performed at a facility in Texas. The cities assessed transaction privilege taxes on the basis that the monitoring either does not constitute a telecommunications service at all or alternatively that it constitutes an intrastate telecommunications service; Brink's position is that the presence of monitoring personnel in Texas makes the communication interstate rather than intrastate in nature, and thus prohibited by A.R.S. § 42-6004. In a consolidated action, Brink's prevailed at the hearing officer level, and the cities timely appealed to this Court.

The parties agree that the controlling case law is *Peoples Choice TV Corp. v. City of Tucson*, 202 Ariz. 401 (2002). There have been no relevant changes to the statute in the intervening years, so the Court follows the statutory interpretation of that case. (The Court throughout will, following *Peoples Choice*, refer to A.R.S. § 42-5064, recognizing that the ban on municipal taxation of interstate telecommunications is actually found at A.R.S. § 42-6004; the former governs the latter.) Additional guidance is provided by *Sonitrol of Maricopa County v. City of Phoenix*, 181 Ariz. 413 (App. 1994), to the extent that it is not overruled by *Peoples Choice*.

The critical language of *Peoples Choice* is found in Paragraph 10. "We believe the statutes at issue here reflect this duality. Section 42-5064 generally allows the imposition of a transaction privilege tax on businesses 'providing intrastate telecommunications services.' The statute's express language thus limits its application to intrastate telecommunications services and, by implication, prohibits the taxation of interstate telecommunications services. In accordance with that prohibition, § 42-5064(A) specifically exempts cable and microwave television systems from intrastate taxation *because such systems, like PCTV, primarily provide interstate programming*." *Id*. at 404 ¶ 10 (internal citation omitted, emphasis added). As this Court interprets that language, it is the balance of interstate versus intrastate service provided that determines whether the activity is taxable. A primarily interstate service is not taxable; conversely, a primarily intrastate service is taxable. This interpretation is necessary to retain the distinction made by the Supreme Court between its case and *Sonitrol*; at 405 ¶ 11, the Court affirmed that the communication engaged in by Sonitrol, which like that of Brink's involved alarm monitoring at an out-of-state location, constituted taxable intrastate commerce.

While the Supreme Court, in affirming *Sonitrol*, did not re-examine the facts underlying the latter in the light of its new holding, the difference between cable television and alarm monitoring is discernable. Cable television is linear. In language cited by our Supreme Court from a Nevada case, the community antenna is the final stage of "one continuous interstate transmission to the viewer's television set." *Id*. (quoting *TV Pix, Inc. v. Taylor*, 304 F.Supp. 459, 463 (D.Nev. 1968)). A linear activity is interstate if either end is located in another state. Here, the monitoring is nonlinear (here, perhaps most accurately triangular, premises to Brink's to police or fire department to premises, but as the principle is independent of the number of vertices, it is simpler to think of it as circular). It detects the presence of fire or intruders at an Arizona address and when any is detected alerts the Arizona authorities to intervene. While most of the time no such activity is detected, it is the possible need to complete the circuit that induces subscribers. According to Brink's own description, the system sends a signal to Texas only when disturbed or triggered. When nothing is detected, there is no interstate content at all. Thus, there are two modes to the monitoring system: the "nothing detected" mode, in which all the activity is in the equipment itself and nothing ever leaves Arizona, and the "something detected" mode, in which a signal generated in Arizona passes through Texas to cause a response in Arizona. The Court assumes that the Texas monitors add a modicum of input by following its protocols in contacting the homeowner/customer or his/her designated contact and in deciding whether to contact the police department or the fire department. But this minimal addition of content does not overcome the primarily Arizona-to-Arizona nature of the activity. The conclusion of *Sonitrol* remains correct even under the *Peoples Choice* principle: the service is primarily intrastate, and is therefore taxable.

Brink's Commerce Clause argument is unavailing. All four of the *Goldberg v. Sweet* factors are met. Monitoring Arizona buildings for Arizona customers creates a substantial nexus with Arizona; the tax is apportioned fairly; it does not discriminate against interstate commerce (an identical business whose monitors were located in Arizona would be taxed identically); and Brink's, in addition to those generally-available benefits used by its local operations, takes advantage of the services of those taxpayer-funded police and fire departments whom it alerts. As indicated by its discussion of *Sonitrol*, which addressed Model Code § 470(c), the Court does not interpret that provision to require a result different than the statute. The telecommunications addressed in *City of Tucson v. Tucson Hotel Equity Ltd. Partnership*, 196 Ariz. 551 (App. 2000), were ordinary, linear and therefore interstate telephone calls made by hotel guests, not the circular and therefore intrastate communication found here. As the court's analysis at 555 ¶ 18 makes clear, Section 470(c) is complementary to Section 470(a)(2)(b), which permits taxation of intrastate telecommunications. *See also Sonitrol, supra* at 419. The same analysis thus applies to the Model Code as the Supreme Court applied to A.R.S. § 42-5064.

Therefore, IT IS ORDERED:

1. Plaintiff City of Phoenix Cross-Motion For Summary Judgment and Plaintiff City of Peoria's Motion For Summary Judgment are granted.

2. Defendant Brink's Home Security Inc.'s Motion For Summary Judgment is denied.